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REMARKS

In response to the Office Action mailed on July 24, 2007, Applicant respectfully requests reconsideration. Claims 1 – 7, 9, and 10 are pending in this Application. Claim 11 is hereby withdrawn.

Claim Rejections - 35 U.S.C. §112

Claims 1, 2, 4, and 10 were rejected under 35 U.S.C. §112 as indefinite and/or containing terms lacking antecedent basis. The claims, as presently amended, overcome these rejections. In particular, Claims 1, 2, 4, and 10 are amended as follows.

The phrase “may be” has been replaced by “is” in Claims 1 and 10.

Regarding the phrase “said logic units,” as used in Claims 1 and 10, the Applicant respectfully traverses. Used in the plural (“logic units”), this term in all instances refers to both the recited “zero or more predetermined logic units” (PLUs) and the “zero or more user defined logic units” (UDLUs). The use of the definite article “said” always denotes a previously-recited element or elements; considered in this context by a person having ordinary skill in the art, the recited term “said logic units” must therefore refer to both types of previously-recited “logic units,” i.e., both the PLUs and the UDLUs. Such usage is not indefiniteness; see MPEP §2173.05(e): “Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.” Accordingly, since the phrase “said logic units” has a basis in both types of previously-recited “logic units,” and since a person having ordinary skill in the art would understand the recited limitation as directed to both the PLUs and the UDLUs, this phrase is not indefinite. Applicant therefore respectfully requests withdrawal of these rejections.

Regarding the phrase “said users” in Claims 1 and 10, the Applicant respectfully notes that the antecedent basis for the term “users” is implicit in the term “user defined” recited in each Claim. However, in the interest of clarity, the Claims have been amended to add the phrase “to a

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plurality of users” to make the antecedent basis for each instance of “said user” absolutely clear. Support for this amendment is found in the Specification at page 2 (first and second paragraphs) and page 4 (first and second paragraphs), where the term “user” is used to refer to both patients and health care professionals.

Regarding the phrase “the administration of said questions,” Applicant draws the Examiner’s attention to the second line of each of the respective preambles, which recite “computerized questionnaire administration.” Since a questionnaire is well known to contain “questions,” the antecedent basis for both the “questions” and their “administration” is clearly provided by the preamble. The preamble must be read as part of the claims. “If the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999), *cited in* MPEP §2111.02. Accordingly, Applicant requests withdrawal of this rejection.

Regarding the phrase “said logic unit execution,” it was the Applicant’s intent to refer to the execution of both the predetermined logic units and the user defined logic units. Claims 1 and 10 have therefore been amended to clarify.

Regarding the phrase “said questionnaires,” the proper recitation should be singular. Accordingly, Claims 1 and 10 have been amended to “questionnaire.”

The Examiner rejected Claim 2 as indefinite for the phrase “an interface.” Applicant respectfully notes that the use of the indefinite article “an” in claim drafting always denotes a new element, which is the meaning intended by the present recitation. However, as an aid to understanding, the Applicant has amended the claim to read “an editor interface.” The addition of this term finds support in the original Specification, pages 11 – 12 and Figs. 13 and 14.

Regarding the phrase “programmatic action” in Claim 4, the Applicant has amended the Claim to delete the rejected phrase.

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Regarding the term “executable” in Claim 10, the Applicant respectfully traverses. The term “executable” here refers to the “computer program” recited on the first line of the preamble. The claim preamble recites a “computer-readable medium” storing a “computer program” that performs a certain function (“individually tailoring computerized questionnaire administration”). It is this “computer program” that is “executable” by a plurality of computers. Being capable of execution (i.e., “executable”) is a well-known trait of a computer program. The term “executable” is in fact most commonly associated with computer programs, not with any of the other recited terms (i.e., “computer-readable medium,” “storing,” “individually tailoring,” “computerized questionnaire” or “administration”). Accordingly, a person having ordinary skill in the art and considering the term in the context of the claim would only associate the term “executable” with a “computer program,” thus providing a definite meaning for this claim. Applicant therefore respectfully requests withdrawal of this rejection.

Since Claims 2 – 7 and 9 are also implicitly rejected under §112 for being dependant on Claim 1, the present traverse and amendments also overcome this implicit rejection.

#### Claim Rejections - 35 U.S.C. §101

Claims 1 – 7, 9, and 11 were rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. Because the law regarding signal claims is currently unsettled (yesterday’s Nuijten decision from the Federal Circuit notwithstanding), Applicant has withdrawn Claim 11 from examination at this time.

Regarding the Examiner’s contention that “Claim 1 recites a system in the preamble only, the body of the claim merely contains software components... the recited invention is computer software per se,” the Applicant respectfully traverses.

The purpose of the system of Claim 1, as recited in the preamble and noted in Applicant’s response to the first Office Action, is “for individually tailoring computerized questionnaire administration...” The term “administration” refers to the production and presentation of a variety of concrete, useful, and tangible questionnaires in the form of computer display screens (see, e.g., Specification pages 2 and 7), viewing via web or internet access (pages 2 – 4, 7), and

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audible or interactive voice prompts as seen in common interactive voice recognition systems (see page 7). The Applicant is free to be his own lexicographer. See MPEP §2173.01 and §2111.01: “Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings”).” See also *Pitney Bowes* and MPEP §2111.02 cited above.

Here, the recited term “administration,” properly considered in context, has the meaning described in the previous paragraph. In accordance with the law and the guidance of the MPEP, the Examiner’s interpretation of the claim preamble cannot ignore this meaning when interpreting the recited “customized data collection system:”

Although claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004) (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation in light of the specification.)

MPEP 2111.01 (emphasis added). Accordingly, Claim 1 must be interpreted to recite a “system for... administration” of questionnaires where the term “administration” has the expansive meaning described above. One of ordinary skill in the art confronted with a “system for... administration... comprising computer instructions” with the above-described understanding of the meaning of the term “administration” would not fail to see that such a system must inherently include the computer apparatus necessary to carry out the “administration.” Indeed, the “computer” itself is explicit in the term “computer instructions.”

The Examiner explains the present rejection by noting, “the body of the claim merely contains software components. Thus the recited invention is computer software per se.” This statement is not only conclusory, it lacks basis in the facts. As noted above, the fact that the

body of the claim contains “software components” is not dispositive. The claim must be read as a whole. Per MPEP §2106.01:

USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.

(Emphasis added.) When one interprets the claim, as a whole, in the context of the Specification and common usage of persons having ordinary skill in the art, and using the above-defined meaning for “a data collection system for... administration,” one must conclude that Claim 1 is drawn to a statutory apparatus under 35 U.S.C. §101. Applicant thus respectfully requests withdrawal of this rejection.

Since Claims 2 – 7 and 9 depend from Claim 1, and Claim 1 contains statutory subject matter, the §101 rejection of Claims 2 – 7 and 9 must also be withdrawn.

The examiner’s citation of the *Lintner* case (page 7 of the present office Action) is inappropriate to the current rejection, since (as quoted by the Examiner), *Lintner* deals with “Claims broad enough to read on obvious subject matter...” No aspect of the present rejection touches on obviousness.

#### Claim Rejections - 35 U.S.C. §102(a)

Claims 1 – 7, 9, and 10 were rejected under 35 U.S.C. §102(a) being anticipated by U.S. Patent Application No. 2002/0035486 (hereinafter Huyn). The Applicant respectfully traverses because Huyn fails to teach or suggest all elements of independent Claims 1 and 10.

Huyn does not teach or suggest either “relationship means to define and track... each of said user’s hierarchical relationship to other said users.” The paragraphs cited by the Examiner as proving support for the above-recited limitation on p. 9 of the instant Office Action only describe a question hierarchy (e.g., “questions are structured into hierarchical levels,” Huyn ¶0013 [emphasis added]; “the hierarchical level of questions,” ¶0053). No mention of a

hierarchy of users, as defined in the Specification at p.12 and Fig. 15, is either taught or suggested by Huyn. As no teaching of “said user's hierarchical relationship” is found in Huyn, there can be no teaching of a “relationship means to define and track” such a hierarchical relationship.

Therefore, for failing to teach or suggest all elements of independent Claims 1 and 10, the Huyn reference cannot form the basis for a §102(a) rejection. Applicant thus respectfully requests withdrawal of these rejections.

Since Claims 2 – 7 and 9 depend from Claim 1, and Claim 1 is clearly distinguished from the teaching of Huyn, the §102(a) rejection of Claims 2 – 7 and 9 must also be withdrawn.

Notwithstanding the foregoing, as to dependent Claims 6 and 7, Huyn fails to teach or suggest any “blocking means to lock one or more of said logic units from modification by other logic units.” Nothing in the material cited by the Examiner, or Huyn considered as a whole, teaches or suggests either “modification by other logic units” or means to “block” such operation. Instead, the cited paragraphs only teach “which questions are included” (Huyn at ¶0014). Inclusion of a question is not “modification” of a logic unit; the structure of the logic unit remains unchanged in Huyn. Accordingly, the Huyn reference does not provide a proper basis for this §102(a) rejection. Applicant thus respectfully requests withdrawal of this rejection.

Furthermore, as to dependent Claim 9, Huyn fails to teach or suggest any “policing means to delete obsolete logic units that have been blocked from execution by previously loaded logic units.” Though the cited portions of Huyn teach a means to “delete forms,” this teaching is only described in the context of “questionnaire design” prior to administration. By contrast, the present system describes automatic policing as the logic units execute. (See p. 11 and Fig. 13.) The claimed “policing means” must operate without user intervention, in direct contradiction to Huyn teaching of a “questionnaire design system... by which the [user] creates and edits questionnaires.” (Huyn §¶0067.) Huyn therefore teaches away from the recited limitation. Accordingly, the Huyn reference does not provide a proper basis for this §102(a) rejection. Applicant thus respectfully requests withdrawal of this rejection.

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Summary

Applicant believes that the Claims as amended are in condition for allowance. A notice to this affect is respectfully requested.

Respectfully submitted,

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